

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2007-004519

08/22/2011

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT

J. Escarcega

Deputy

IN RE THE MATTER OF  
MICHAEL TRENT MAY

MICHAEL TRENT MAY  
4187 N SENTINEL DR  
BUCKEYE AZ 85396

AND

LARA MICHELLE MAY

LOUIS K LOMBARDO

MINUTE ENTRY

Courtroom 201 – Old Courthouse

Prior to the commencement of this proceeding, Petitioner/Father Michael Trent May and Intervenor/Grandmother Monica Sottile are sworn, and Intervenor/Grandmother's Exhibits 1 through 13 are marked for identification.

9:02 a.m. This is the time set for an evidentiary hearing on the Petition for *In Loco Parentis* Custody and Visitation filed by Intervenor/Grandmother on August 4, 2011 and the Petition to Modify Child Custody, Parenting Time and Child Support filed by Petitioner/Father on July 5, 2011. Petitioner/Father is present on his own behalf. Intervenor/Grandmother is present with counsel, Louis K. Lombardo.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Intervenor's case:

Intervenor, Monica Sottile, testifies.

Intervenor's Exhibits 1, 4, 5, 7, 9 and 13 are received in evidence.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2007-004519

08/22/2011

Francine Castillo is sworn and testifies.

Intervenor rests.

Petitioner's case:

9:40 a.m. Court is in recess.

9:42 a.m. Court reconvenes with respective counsel and parties present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Petitioner Michael Trent May testifies.

Petitioner's Exhibits 14 through 19 are marked for identification and received in evidence.

IT IS ORDERED taking this matter under advisement.

There being no further need to retain the exhibits not entered in evidence in the custody of the Clerk of Court,

IT IS ORDERED that the Clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked or their written designee. Counsel/party or written designee shall have the right to re-file relevant exhibits as needed in support of any appeal. Re-filed exhibits must be accompanied by a Notice of Re-filing Exhibits and presented to the Exhibit Department of the Clerk's office. The Court's exhibit tag must remain intact on all re-filed exhibits.

IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release Form

9:55 a.m. Matter concludes.

**LATER:**

Following Evidentiary Hearing, the Court took the Petition for *In Loco Parentis* Custody and Visitation filed by Intervenor/Grandmother on August 4, 2011 and the Petition to Modify

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2007-004519

08/22/2011

Child Custody, Parenting Time and Child Support filed by Petitioner/Father on July 5, 2011 under advisement. The Court has considered the testimony and the evidence presented.

**Jurisdictional Findings**

Intervenor/Grandparent seeks custody of Hailey May (DOB March 12, 1998) and Naomi May (DOB June 9, 2000) under A.R.S. § 25-415.

**THE COURT FINDS** that Mother and Father have two minor children: Hailey May (DOB March 12, 1998) and Naomi May (DOB June 9, 2000). The parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of the Petition for Dissolution. This Court, therefore, has jurisdiction as Arizona is the “home state” of the minor children. *See* A.R.S. § 25-1031.

The Court has jurisdiction in this matter to hear Intervenor’s Petition for In Loco Parentis Custody and Visitation, filed August 4, 2011 action because the children’s Mother passed away on May 25, 2011. *See* A.R.S. § 25-415.A.4. The Court considers Father’s Petition to Modify Custody, filed July 8, together with this Petition.

Intervenor bears the burden of overcoming by clear and convincing evidence the presumption that it is in the children’s best interest for the Court to award custody to a legal parent. Subsection A.R.S. § 25-415.B provides as follows under the circumstances of this case:

If a person other than a child's legal parent is seeking custody there is a rebuttable presumption that it is in the child's best interest to award custody to a legal parent because of the physical, psychological and emotional needs of the child to be reared by the child's legal parent. To rebut this presumption that person must show by clear and convincing evidence that awarding custody to a legal parent is not in the child's best interests.

**In Loco Parentis Findings: A.R.S. § 25-415**

Intervenor must establish that she stands *in loco parentis* to the children. Under A.R.S. § 25-415.G, a person stands *in loco parentis* if a person “has been treated as a parent by the child and . . . has formed a meaningful parental relationship with the child for a substantial period of time.”

Father disputes that Intervenor stands *in loco parentis*.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2007-004519

08/22/2011

**THE COURT FINDS** as follows:

- Intervenor has provided care for both children without any help from Father since Mother became sick in February of this year (and for some months in 2009 when she was sick).
- Mother's wishes were for Intervenor to care for both children if she died from her illness (expressed both verbally and in Mother's will).
- Father has not complied with the orders of the Court from September 30, 2010.
- Both children are well adjusted to being cared for by Intervenor.
- Mother's three sisters are in a position to assist Intervenor in caring for both children.

**IT IS THEREFORE ORDERED** that Intervenor, Monica Sottile, the maternal Grandmother of the children, stands *in loco parentis* to Hailey May (DOB March 12, 1998) and Naomi May (DOB June 9, 2000).

**Best Interest Findings: A.R.S. § 25-403**

Because Intervenor stands *in loco parentis* to Hailey May (DOB March 12, 1998) and Naomi May (DOB June 9, 2000), the Court must consider the best interest of the children. The best interest of a child is the primary consideration in awarding child custody. *Hays v. Gama*, 205 Ariz. 99, 102, ¶ 18, 67 P.3d 695, 698, ¶ 18 (2003). The child's best interest is paramount in custody determinations. Section 25-403(A) enumerates specific factors for the Court to consider, among other relevant factors, in making a determination concerning a child's best interests. *See* A.R.S. § 25-403(A) ("The Court shall determine custody, either originally or on petition for modification, in accordance with the best interests of the child. The Court shall consider all relevant factors including [the ten factors enumerated in the subsection].").

In making a custody determination, the Court is mindful that as a matter of public policy, absent evidence to the contrary, "it is in a child's best interest to have substantial, frequent, meaningful and continuing parenting time with both parents.

Because the Court must consider the children's best interest, the Court considers those factors articulated in A.R.S. § 25-403.

**THE COURT FINDS** as follows regarding the children's best interests:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2007-004519

08/22/2011

1. *The wishes of the child's parent or parents as to custody.*

Father wants sole custody of both children. Intervenor wants sole custody of both children.

2. *The wishes of the child as to the custodian.*

The sole reliable evidence on this issue is that both children want to stay with Intervenor, who has been caring for them since Mother's death.

3. *The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.*

Both children have developed a normal relationship with Intervenor. Neither appears to have normal relationships with Father.

4. *The child's adjustment to home, school and community.*

Both children seem well adjusted to their current home, school and community situation.

5. *The mental and physical health of all individuals involved.*

There are no mental or physical health issues in this case.

6. *Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.*

Intervenor describes a desire to develop a meaningful relationship between the children and Father. Father's intent on this issue is unclear.

7. *Whether one parent, both parents, or neither parent has provided primary care of the child.*

Intervenor has been caring for both children since March 2009.

8. *The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.*

There is no evidence of any coercion or duress being used to obtain agreements.

9. *Whether a parent has complied with chapter 3, article 5 of title 25, Arizona Revised Statutes.*

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2007-004519

08/22/2011

There is no evidence of non-compliance.

10. *Whether either parent was convicted of an act of false reporting of child abuse or neglect under A.R.S. § 13-2907.02.*

Not applicable.

11. *In addition to the foregoing, the Court must also consider any history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05).*

There are no alleged acts of significant domestic violence or of any of the specific criminal convictions.

**In Loco Parentis Legal Custody**

**THE COURT FURTHER FINDS** that based upon the above and in accordance with the best interests of the minor children, Intervenor has established by clear and convincing evidence that based on Intervenor's *in loco parentis* status, it is in the children's best interest that Intervenor be awarded sole legal custody of Hailey May (DOB March 12, 1998) and Naomi May (DOB June 9, 2000).

**IT IS THEREFORE ORDERED** awarding Intervenor sole legal custody of Hailey May (DOB March 12, 1998) and Naomi May (DOB June 9, 2000) based Intervenor's *in loco parentis* status.

**Parenting Time**

**THE COURT FINDS** that Father has failed to present any evidence that he has complied with the conditions set by the Court in its September 30, 2011 order. Until those orders are complied with, Father will continue to be prohibited from exercising any parenting time. If, or when, Father complies with the September 30, 2011 order, parenting time as ordered in that order will be awarded. In order to show compliance with those prerequisites, Father shall file a Notice of Compliance, and serve a copy of the same on Intervenor by registered mail with a return receipt. If Intervenor disputes the fact that Father has complied with the Court's order, she will have 20 days from receipt of service of the Notice of Compliance to file a request for a hearing.

**FILED:** Exhibit Worksheet

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2007-004519

08/22/2011

**IT IS FURTHER ORDERED** signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

/S/ JUDGE CHRISTOPHER WHITTEN

---

JUDGE CHRISTOPHER WHITTEN  
JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.